

AN RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE

08- R -2286

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER #2 TO CONTRACT NO. FC-7692-04 WITH ARCHER WESTERN CONTRACTORS, LTD./CAPITAL CONTRACTING COMPANY, INC., A JOINT VENTURE, AND ASSOCIATED PURCHASE ORDER FC-7692-04-PO, CONRAC AUTOMATED PEOPLE MOVER SYSTEM, ON BEHALF OF THE DEPARTMENT OF AVIATION, IN AN AMOUNT NOT TO EXCEED \$8,730,000, TO BE CHARGED TO AND PAID FROM PTAE0 18102610 (CONRAC APM CENTER) 102 (R21E013593CR) 551121375 (DOA 2004 J N K PFC 93CR) 5414002 (FACILITIES OTHER THAN BLDGS-CIP) AND FDOA 5511 (204 AIRPORT FPC BOND FUND F-K) 180201 (DOA AVIATION CAPITAL PLANNING & DEVELOPMENT) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE-CIP) 7563000 (AIRPORT) 102610 (CONRAC APM CENTER) 21375 (DOA 2004 J N K PFC 93CR) 0000 (DEFAULT) 00000000 (DEFAULT) 00000000 (DEFAULT);AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the "City") owns and operates Hartsfield-Jackson Atlanta International Airport (the "Airport"); and

WHEREAS, the City entered into Contract No. FC-7692-04 and associated Purchase Order No. FC-7692-04-TO ("CONRAC DBOM Contract"); CONRAC Automated People Mover System with Archer Western Contractors, Ltd./Capital Contracting Company, Inc., a Joint Venture ("Contractor"), pursuant to Resolution 05-R-1507, adopted by the City's Council on September 19, 2005, and approved by the Mayor on September 27, 2005; and

WHEREAS, the CONRAC DBOM Contract generally involves the City's construction of an Automated People Mover ("APM") Guideway and Maintenance and Storage Facility, acquisition of APM Trains and Train Control Equipment, and the subsequent operation and maintenance of those facilities and equipment; and

WHEREAS, the City also entered into Contract No. FC-3004007808 ("CONRAC CM@Risk Contract"); CONRAC Construction Manager at Risk, with Austin Commercial, LP/PRAD Group, a Joint Venture ("CONRAC CM@Risk"), pursuant to Resolution 05-R-1506, adopted by the City's Council on September 19, 2005, and approved by the Mayor on September 27, 2005; and

WHEREAS, the CONRAC CM@Risk Contract generally involves the construction of a Consolidated Rental Car Facility ("CONRAC"), including the Customer Service Center ("CSC"), Parking Garages, Quick Turnaround Areas, and the CSC, Georgia International Convention Center, and Central Passenger Terminal Complex (CPTC) APM Stations; and

WHEREAS, the City and the Contractor executed Change Order #1 to the CONRAC DBOM Contract which transferred the GICC and CPTC APM station construction from the CONRAC CM@Risk Contract to the CONRAC DBOM Contract to eliminate Contract interface issues; and

WHEREAS, Change Order #1 to the CONRAC DBOM Contract required the CONRAC CM@Risk to turn over the CSC APM Station to the Contractor on May 11, 2008, for installation of the Automatic Train Control Equipment and APM Station Doors and acknowledged that the Contractor had sustained at a minimum a six month delay to the Contractor's schedule; and

WHEREAS, Change Order #1 also required that, once the full delay impact to the Contractor was known, that the City and the Contractor would negotiate in good faith the cost and schedule impacts which would be addressed in a separate Change Order; and

WHEREAS, such additional negotiations have occurred and a resolution reached and, therefore, the Chief Procurement Officer and Aviation General Manager recommend that it is desirable and in the best interests of the City to execute with the Contractor Change Order #2 in an amount not to exceed \$8,730,000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS, that the Mayor is authorized to execute Change Order #2 to the CONRAC DBOM Contract and associated Purchase Order FC-7692-04-PO in an amount not to exceed \$8,730,000, with the Purchase Order being increased in an amount of \$870,340 and the CONRAC DBOM Contract being increased in an amount of \$7,859,660.

BE IT FURTHER RESOLVED, that the City Attorney is directed to prepare Change Order #2 to the CONRAC DBOM Contract and associated Purchase Order FC-7692-04-PO.

BE IT FURTHER RESOLVED, that all work under Change Order #2 to the CONRAC DBOM Contract and associated Purchase Order FC-7692-04-PO will be charged to and paid from PTAE0 18102610 (CONRAC APM Center) 102 (R21E013593CR) 551121375 (DOA 2004 J N K PFC 93CR) 5414002 (Facilities Other Than Bldgs - CIP) AND FDOA 5511 (204 Airport PFC Bond Fund F-K) 180201 (DOA Aviation Capital Planning & Development) 5414002 (Facilities Other Than Bldgs/Infrastructure - CIP) 7563000 (Airport) 102610 (CONRAC APM Center) 21375 (DOA 2004 J N K PFC 93CR) 0000 (Default) 00000000 (Default) 00000000 (Default).

BE IT FINALLY RESOLVED, that Change Order # 2 to the CONRAC DBOM Contract and associated Purchase Order FC-7692-04-PO will not become binding upon the City and the City will incur no liability under it until it has been executed by the

Contractor, delivered to the City, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and returned to the Contractor.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The CONRAC Development Program is currently being implemented through two Contracts held by the City of Atlanta.

In October 2005 the City awarded Contract FC-7692-04 CONRAC Automated People Mover System, to a Joint Venture of Archer Western Contractors/Capital Contracting Company to design and build an Automated People Mover (APM) train system to connect the Central Passenger Terminal Complex at Hartsfield-Jackson Atlanta International Airport and the CONRAC facility.

Also in October 2005, Council awarded a Contract FC-3004007808 Consolidated Rental Car Facility (CONRAC) – Construction Manager at Risk (CMR) to Austin Commercial Inc./Prad Group Joint Venture, to construct the CONRAC facility. The major components of work include site development and utilities, two large parking structures, two remote APM stations, roadways to the CONRAC facility from the CPTC (includes a bridge spanning I-85), the customer service center and associated APM station, and quick turn-around service facilities to accommodate the Rental Car Agencies and their customers.

In November of 2006, Council authorized the Aviation General Manager to issue work authorizations in an amount not to exceed \$235,603,187 for Contract FC-3004007808.

On June 22, 2007 the City executed Change Order # 1 with Archer Western/Capital Contracting which transferred the responsibility for the construction of the Georgia International Convention Center and Central Passenger Terminal Complex APM stations from the CMR to Archer Western/Capital Contracting pursuant to Ordinance 07-O-0984. Change Order # 1 was valued at \$29,500,000.

The City has also negotiated and executed several Intergovernmental Agreement's with the City of College Park regarding the CONRAC facility, working closely together to ensure airport development is in harmony with growth around the airport.

2. Please provide background information regarding this legislation.

The work on the CONRAC project and the Automated People Mover project overlap at the APM Stations. When the two projects were initially procured in early 2004, the plan was for the Construction Manager at Risk to build the Customer Service Center (CSC), Georgia International Convention Center (GICC) and Central Passenger Terminal Complex (CPTC) APM stations and then turn the stations over to the APM Contractor to install the automatic train control equipment and automatic doors. Interface dates for the stations were placed into both Contracts concerning when the stations were to be completed and when access was to be provided to the APM Contractor. The 2004 coordination plan for this work, which was included in the Contracts was intended to not have both Contractors performing significant work in the stations at the same time.

The City has entered into an Intergovernmental Agreement with College Park to authorize College Park to sell Bonds to partially fund the CONRAC Program. Unfortunately the time required to execute these agreements was greater than anticipated. The City could not enter into a contract with the CMR until these Intergovernmental Agreements were complete. The CMR originally gave us a proposal to do this work, including cost projections in 2004. This cost projection submittal was prior to the extreme construction cost escalation the construction industry is currently experiencing. This delay, in addition to the time it is taking to understand our cost position with the CMR, caused a critical interface issue with the contractor constructing the APM System to the facility.

Accordingly, Change Order #1 was developed and executed on June 22, 2007 to transfer the construction of the Gateway and CPTC stations to the APM contractor. This effectively alleviated delays and inefficiencies between the contractors at two of the three stations.

However, as noted during the approval process of Change Order #1, the interface delay at the CSC station could not be eliminated, and that the delay associated with the APM Contractor's lack of access to the CSC station in accordance with the Contract milestones would result in a valid delay claim being made by the APM contractor.

At the time of Change Order #1, it was known that there would be a delay of approximately 6 months to the time the APM contractor would be entitled by contract to receive its work areas, from the time at which the CMR contractor would be able to construct the building to a level of completion that would allow the APM installations to take place. It was also noted that the likely cost of this delay would be approximately \$1M per month.

Since that time, the delay to the turnover of the work areas to the APM contractor has been extended from 6 months to 11.4 months. The primary cause of the added delay was the unanticipated shallow refusal of the CSC station deep foundations installation, or caissons, as a result of variable lenses of subsurface rock layers. This condition necessitated the redesign of many of the building foundations and caused delays.

Recognizing the existence of this delay in early 2008, a proactive plan was devised with the intent of mitigating as much of the cost overrun as possible, through an aggressive dispute resolution approach. This was done to encourage maximum cooperation and coordination between the APM and CMR

contractors, to mitigate additional delays, and to facilitate the most accurate planning possible. A key aspect of the approach was to determine the actual cost of the delay to ensure that the City was not paying for any added costs not specifically related to the CSC delay.

Accordingly, an extensive audit and months of negotiations were conducted to quantify the costs of the delay, and to ensure that all expenses and costs related to the APM base contract work, or related to the GICC and CPTC stations work transferred in Change Order #1, was separated, and not included in the delay costs related to the CSC station.

The result of this comprehensive process is an agreement in principle reached between the APM contractor and the owner that the actual cost of the 11.4 month delay to the CSC station is \$8,730,000. This was determined through the extensive analysis of the APM contractor's, and its subcontractor's, payroll records, equipment records, cost reports, tax records, and significant other contemporaneous documentation.

Through this audit, the claim was reduced to a total of approximately \$765,000 per month, or about 25% less than the original \$1M to 1.1 per month that was originally anticipated.

The most important aspect of the proactive settlement process that addresses the actual delay, and the actual cost, is that the parties may now set about the difficult and complex task of installing and testing the train system with the knowledge that past disputes are settled. This has and will continue to foster a greatly improved environment for coordination between the APM contractor, the CMR contractor, and the Owner, as the resources of the team can now focus on project planning, coordination and execution.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Change Order #2

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:**

4. Fund Account Center (Ex. Name and number): FROM PTAE0 18102610 (CONRAC APM CENTER) 102 (R21E013593CR) 551121375 (DOA 2004 J N K PFC 93CR) 5414002 (FACILITIES OTHER THAN BLDGS – CIP) AND FDOA 5511 (204 AIRPORT FPC BOND FUND F-K) 180201 (DOA AVIATION CAPITAL PLANNING & DEVELOPMENT) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE – CIP) 7563000 (AIRPORT) 102610 (CONRAC APM CENTER) 21375 (DOA 2004 J N K PFC 93CR) 0000 (DEFAULT) 00000000 (DEFAULT) 00000000 (DEFAULT)

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Finance/Executive

Chief of Staff Deadline: 11/12/08

Anticipated Committee Meeting Date(s): 11/26/08

Anticipated Full Council Date: 12/01/08

Commissioner Signature: 

Chief Procurement Officer Signature: 

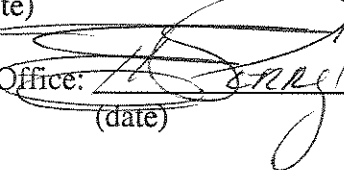
CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER #2 TO CONTRACT NO. FC-7692-04 WITH ARCHER WESTERN CONTRACTORS, LTD./CAPITAL CONTRACTING COMPANY, INC., A JOINT VENTURE, AND ASSOCIATED PURCHASE ORDER FC-7692-04-PO, CONRAC AUTOMATED PEOPLE MOVER SYSTEM, ON BEHALF OF THE DEPARTMENT OF AVIATION, IN AN AMOUNT NOT TO EXCEED \$8,730,000, TO BE CHARGED TO AND PAID FROM PTAE0 18102610 (CONRAC APM CENTER) 102 (R21E013593CR) 551121375 (DOA 2004 J N K PFC 93CR) 5414002 (FACILITIES OTHER THAN BLDGS-CIP) AND FDOA 5511 (204 AIRPORT FPC BOND FUND F-K) 180201 (DOA AVIATION CAPITAL PLANNING & DEVELOPMENT) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE-CIP) 7563000 (AIRPORT) 102610 (CONRAC APM CENTER (21375 (DOA 2004 J N K PFC 93CR) 0000 (DEFAULT) 00000000 (DEFAULT) 00000000 (DEFAULT);AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) \$8,730,000

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office:  Reviewed by: 11/14/08 Amc
(date) (date)

Submitted to Council: _____
(date)